

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT
HYDERABAD

_____ DAY THE _____ DAY OF JULY, TWO THOUSAND AND FIVE

THE HON'BLE SRI JUSTICE K.C. BHANU

Between:

Prabhavathi Kulkarni

...Petitioner

a n d

Government of Andhra Pradesh

Rep. By its Secretary, Education Department,

Secretariat, Hyderabad and others.

...Respondents

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 7391 of 2003

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ORDER:

This writ petition is filed seeking to give a direction to the respondents to declare that the petitioner is appointed on regular

basis and is entitled for absorption from the date of appointment with all consequential benefits.

The case of the petitioner is that she has completed the training in Hindi Pandit and fully qualified to be appointed as Hindi Pandit in the school run by 4th respondent. She was originally appointed in a leave vacancy on 21.6.1987 and thereafter continued from the next academic year 1988-89 in Sharada Karnataka Kanyasala run by 4th respondent and she has been working regularly from 24.6.1988 till date. Though she is fully qualified and eligible to be appointed on regular basis, no steps have been taken by the respondents to absorb her on regular basis. As she has been working in the institute run by 4th respondent right from 1987, the action of the respondents in not regularizing her service as Hindi Pandit is arbitrary. Even the services of her junior Pameela Kulkarni who was appointed as Hindi Pandit, Grade-II on 1.8.1991 i.e. much after she entered the service have been regularized and therefore the action of the respondents in not extending the benefit given to the other teachers who are similarly placed is quite arbitrary and discriminatory. Hence the writ petition.

On the other hand it is the case of the respondents that to regularize the services of temporary employee and to absorb in an aided vacancy there should be sufficient workload and the candidate should have been selected by a selection committee as per rule prescribed in G.O.Ms.No.1 Education dated 1.1.1994, but no such selection was made in the case of the petitioner. The four posts of Hindi Pandits which were shown as vacant continue to be vacant and they need not be filled up as the workload is reduced due to

uneconomic strength and no selection committee was formed after 1994. The petitioner is continuing temporarily till now on consolidated pay only.

Learned counsel for the petitioner contended that the petitioner was initially appointed in the year 1987 in the leave vacancy and for the last two decades the petitioner has been working as a teacher and her services have not been regularized. The case of the petitioner is on par with the case of the petitioners in W.P. 22722 of 1998 and she has left with 7 years of service and hence he submits that she can be deemed to have been appointed on regular basis and entitled for absorption from the date of appointment. He also relied upon several decisions which will be referred to at appropriate time.

On the other hand, learned Government Pleader vehemently contended that there is no material to show that the appointment of the petitioner was approved; that her appointment was not against any sanctioned post; that by the date of appointment she does not possess the minimum educational qualifications and she came through the back entry and her services cannot be regularized and therefore the writ petition deserves to be dismissed. It is stated by the petitioner that she was appointed as Hindi Teacher in Sharada Karnataka Kanyasala which is a sister concern run by 4th respondent. She was transferred to Nrupatunga High School on 21.8.2000.

Learned counsel for the petitioner placed strong reliance on a decision of the apex Court in **State of Haryana v. Piara Singh**

wherein it is held:

“whether a temporary or ad hoc appointment is continued for long, the Court presumes that there is a need and warrant for a regular post and accordingly directs regularization”.

In the aforementioned decision it is also specifically stated “we must also say that the further requirement prescribed in the orders viz., that the employees must have possessed the prescribed qualifications for the post at the time of his appointment on ad hoc basis is equally a valid condition. Indeed, no exception is taken to it by the High Court”.

In another decision relied on by the learned counsel for the petitioner in **State of U.P. v. Sant Lal** wherein it is held “we have no doubt that taking into consideration the long service of the respondent and also taking into consideration the fact that even when his services were sought to be terminated in February 1976, he had put in not less than 14 years of service, though according to the State Government in a temporary capacity, the State Government would now take steps for regularization of his services and give him all the benefits including that of promotion to which he is entitled”.

He also relied on a decision of the apex Court in **Jacob M. Puthuparambil v. Kerala Water Authority** wherein it is held:

“But once the appointments continued for long, the services had to be regularized if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must

be allowed to continue on their jobs and their services should be regularized. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences”.

From a perusal of the above decisions it is clear that whether it is ad hoc or temporary appointment, when a person continued for several years as in this case more than two decades, such person shall not be removed provided he must have the prescribed qualification at the time of ad hoc appointment. In this case, according to the respondents, the petitioner acquired qualification in Hindi Sikshaka in the year 1995 which is minimum required qualification to be appointed as Hindi teacher. According to the petitioner, she was appointed as Hindi Pandit in the year 1988-89. So, by the date of her appointment she does not possess the minimum educational qualification. Therefore, she cannot be deemed to have been appointed on regular basis under any circumstances.

Learned counsel for the petitioner relied upon an unreported judgment of this Court in W.P. 22722 of 1998 dated 24.3.2003 wherein this Court directed the respondents that the petitioners shall be sanctioned and paid the arrears due on their regularization, expeditiously and in any event within a period of four months from the date of receipt of a copy of this order.

The petitioners therein were also working in Karnataka Sikshana Samithi School. It is not known whether the petitioners therein were having requisite minimum qualifications. Therefore the case of the petitioner cannot be clubbed with that of the petitioners in W.P. 22722 of 1998.

Learned counsel for the petitioner also relied upon an unreported decision of this Court in W.P. 20370 of 1993 dated 4.4.2002 wherein it is held that there is some justification for directing regularization of the petitioner in some other needy college pursuant to the said memo issued by the Government. That is a case where the petitioner therein was having the requisite qualifications for the post of Lecturer in English. Therefore the said decision has no application to the present facts.

He also relied upon another unreported judgment of this Court in W.P. Nos. 15283 of 1990 and 3888 of 1994 dated 13.11.1998. Even in that case, the petitioners therein were having minimum requisite qualifications and therefore the above decision has no application to the present facts of the case.

Learned Government Pleader for School Education contended that the petitioner was not selected by a duly constituted selection committee and she was not appointed against the sanctioned vacant aided post and the petitioner is continuing temporarily till now on consolidated pay. He also contended that the vacancies of teacher posts were not filled up, as there was no workload in the aided posts. He also relied upon a decision of this Court in K.C. High School, **Guntur v. Government of A. Prosecution Education Department, Hyderabad** wherein certain directions were given that the respondents concerned will extend the benefit of grant-in-aid for the posts held by these teachers, to the teachers found suitable for continuance, with effect from 1.4.1997 provided they have been appointed against clear vacancies and sanctioned posts.

There is no indication in the writ petition that the

petitioner was appointed in a sanctioned vacancy. The affidavit is vague with regard to the availability of posts or vacancies at the time of her appointment. When she was appointed as a Drawing Teacher on 21.6.1997, it was in a leave vacancy. Though she claims that she is fully qualified to be appointed as Hindi Pandit, the affidavit is very vague as to when she completed Hindi Vidwan and Sahitya Ratna Part-I and when she completed Hindi Pandit course. It must be established by her that she was having the requisite minimum educational qualification. Even the decisions of the apex Court relied upon by the learned counsel for the petitioner state that the minimum educational qualification is a condition precedent for absorption or continuation. Therefore, the relief sought for cannot be given in view of the fact that there is no material available to show that a vacant post is available in which the petitioner was duly selected by a selection committee and that she possesses the requisite educational qualifications for the post of Hindi Pandit.

Therefore the writ petition is devoid of merit and it is accordingly dismissed.

K.C. Bhanu, J.

Date: --07—2005.

MVB.